IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Dana Ram & Anr. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 447/2003
against the order dated 29-1-2003 passed
by the Additional Sessions Judge, Churu,
in Criminal Revision No. 8/2002.

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Date of Order: October 17, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. N.L. Joshi, for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

This criminal miscellaneous petition under Section 482 Cr.P.C. is directed against the order dated 29-1-2003 passed by the Additional Sessions Judge, Churu (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 8/2002, whereby the revision petition filed by the petitioners against the order dated 10-9-2001 passed by the Chief Judicial Magistrate, Churu (for short, "the trial Court" hereinafter) was dismissed.

I have heard learned counsel for the petitioners and the Public Prosecutor for the State. Carefully gone through the orders passed by the trial Court as well as by the Revisional Court. I have also gone through the Challan papers.

It is contended by the learned counsel for the petitioners that the recovery of the currency notes was made from the present petitioners after one year from the date of the occurrence. Learned counsel further submits that the recovery has been fabricated by the police and the amount, which has been recovered by the police, is by the sell of buffaloes etc. belong to the petitioners. Learned counsel has relied on a decision of the Hon'ble Supreme Court in Trimak Vs. State of Madhya Pradesh, AIR 1954 SC 39, wherein the Hon'ble Apex Court held that it is the duty of the prosecution in order to bring home the guilt of a person under Section 411 IPC to prove (1) that the stolen property was in the possession of the accused, (2) that some person other than the accused had possession of the property before the accused got possession of it, and (3) that the accused had knowledge that the property was stolen property.

Learned Public Prosecutor has supported the orders passed by the Courts below.

By the order dated 10-9-2001, the trial Court took the cognizance of the offence under Section 411 IPC against the petitioners. The allegation against co-accused Amla Prasad, who at the relevant time was posted as Head Constable and Incharge of Malkhana at Police Station, Kotwali, Churu, is that a sum of Rs.3,38,280/- which was in the Malkhana of the said Police

Station, had been taken away by Head Constable Amla Prasad and out of the said amount, certain sum had been given to the present petitioners. During investigation, co-accused Amla Prasad was arrested and at his instance, various sums have been recovered. As stated by the counsel for the petitioners, a sum of Rs.9000/- was recovered from petitioner No.1 Dana Ram and a sum of Rs.6000/- was recovered from petitioner No.2 Smt. Chandrawat, at the instance of co-accused Amla Prasad. During investigation, the police recovered a diary maintained by co-accused Amla Prasad bearing the signatures of the present petitioners having received various sums on different dates. From the statements of the prosecution witnesses recorded under Section 161 Cr.P.C. also, prima facie it appears that after having taken away the said amount from the Malkhana of Police Station, Kotwali, Churu, on various occasions, some amount had been handed over to the present petitioners, which is evident from the diary maintained by co-accused Amla Prasad available on record.

So far as effecting the recovery after one month of the occurrence is concerned, the occurrence was revealed later on and thereafter when co-accused Amla Prasad was arrested, he furnished the information under Section 27 of the Evidence Act and in furtherance of that information, the recoveries were effected from other sources, including the recoveries of the

currency notes from the present petitioners.

Section 410 IPC defines the “stolen property”, which means the property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in the respect of which criminal breach of trust has been committed, is designated as “stolen property”, whether the transfer has been made, or misappropriation or breach of trust has been committed within or without India. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

From the evidence on record, it has not been established that the petitioners were legally entitled to possess the said sum which allegedly recovered from them. In Trimbak Vs. The State of Madhya Pradesh (supra), the Hon'ble Apex Court held that to bring home the guilt of a person under Section 411 IPC, the prosecution has to prove (1) that the stolen property was in the possession of the accused, (2) that some person other than the accused had possession of the property before the accused got possession of it, and (3) that the accused had knowledge that the property was stolen property. In the instant case, prima facie the currency notes which were in possession of the present petitioners were stolen and prior to coming into the possession of the present petitioners, the said

currency notes were stolen/misappropriated by committing criminal breach of trust by Head Constable Amla Prasad, who was the Incharge of the Malkhana of Police Station, Kotwali, Churu. From the diary recovered from co-accused Amla Prasad and the other evidence, prima facie it appears that the petitioners had the knowledge that co-accused Amla Prasad had taken away the said currency notes from the Malkhana of the aforesaid Police Station, for which he was not entitled. The matter is at the initial stage. Therefore, the judgment relied on by the learned counsel for the petitioners is of no help to the petitioners because in that case, the matter was before the Appellate Court after trial. In the instant case, the matter is at the initial stage and the evidence is yet to be recorded.

For the purpose of taking cognizance of an offence, what the Court is required is to satisfy itself whether prima facie there are sufficient ground to proceed against the accused. In Jagdish Ram Vs. State of Rajasthan, AIR 2004 SC 1734, the Hon'ble Surpreme Court held that at the stage of taking cognizance, the Magistrate has only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The Apex Court further held that investigation is the exclusive domain of the

police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding, and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

Keeping in view the decision of the Hon'ble Supreme Court in Jagdish Ram Vs. State of Rajasthan (supra) and the fact that both the Courts below found that there is prima facie case to proceed against the petitioner, in my view, no case for interference is made out. It cannot be said that the orders impugned would result in serious miscarriage of justice or abuse of the process of the Court.

The criminal miscellaneous petition is, therefore, dismissed.

(H.R. PANWAR), J.

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